

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ROYLENE RAY, *et al.*,

No. C-06-1807 JSW (EMC)

Plaintiffs,

**ORDER RE PARTIES' JOINT LETTER  
OF JULY 3, 2008**

v.

BLUEHIPPO FUNDING, LLC, *et al.*,

**(Docket No. 147)**

Defendants.

As reflected in the joint letter of July 3, 2008, the parties have a discovery dispute as to whether (1) Defendant BlueHippo Funding LLC should be compelled to respond to Plaintiffs' Document Request No. 2, which seeks the production of all documents pertaining to eight different individuals, and (2) BlueHippo should be permitted to redact customer-specific information from, *e.g.*, customer complaints and other documents that contain names, addresses, and/or other contact information for absent class members.

Having reviewed the joint letter, as well as all other evidence of record, the Court hereby **GRANTS** in part and **DENIES** in part Plaintiffs' request for relief.

1. Documents Related to Eight Individuals

Plaintiffs contend that the documents sought pursuant to Document Request No. 2 are relevant because the individuals are potential class members and documents relating to them may go to certification issues such as typicality and commonality. BlueHippo contends that, while discovery about *all* potential class members is permissible, "cherry-picking" of select individuals is not. BlueHippo further contends that the document request seeks customer information that is private, in particular, their personal financial information.

1 The Court does not find BlueHippo's arguments persuasive. BlueHippo does not cite any  
2 authority which states that a class action plaintiff is barred from seeking discovery about less than all  
3 potential class members. Indeed, discovery of a sampling of potential class members is  
4 contemplated by the Manual of Complex Litigation. *See* Manual of Complex Litig. § 21.14, at 257.  
5 That Plaintiffs in the instant case are not asking for random sampling but rather for particularized  
6 sampling is not dispositive.

7 As for privacy issues, Plaintiffs have stated for the record that they do not seek personal  
8 financial information such as bank account numbers, balances, and so forth. Plaintiffs have also  
9 stated that, if BlueHippo deems it necessary, it may redact additional personal financial information  
10 from the documents that are produced so long as BlueHippo provides a log that specifies the type of  
11 information that was redacted and leaves open for future discussion and/or judicial resolution  
12 whether the redaction was appropriate. Finally, there is a protective order in place in the case which  
13 allows for an attorney's eyes only designation. *See* Docket No. 82.

14 While the Court does not agree with BlueHippo's position, it does not accept Plaintiffs'  
15 position in its entirety either. First, as written, Document Request No. 2 is overbroad. It asks for all  
16 documents that pertain to a specific individual, without limitation. Plaintiffs do not explain how all  
17 such documents would relate to the issues of commonality or predominance. Although the test of  
18 discoverability is broad under Rule 26, Plaintiffs must articulate the kinds or categories of  
19 documents they seek and explain their relevance to class certification issues. Second, the request  
20 asks for information related to Dawn Bone, whom Plaintiffs identify as a resident of Alabama at the  
21 time she became a BlueHippo customer, but the class is defined as California residents from whom  
22 BlueHippo received money for merchandise but who never received merchandise. *See* TAC ¶ 78.

23 In light of the above, the Court orders that the parties meet and confer to determine (1)  
24 whether they can agree upon a more narrowly tailored request, (2) whether there are additional  
25 categories of personal financial information that are appropriate to redact, and (3) and whether Ms.  
26 Bone is in fact a potential class member given the definition of the class as alleged in Plaintiffs'  
27 third amended complaint. The parties should bear in mind during the meet and confer in addressing  
28 the issues regarding the breadth of documents to be produced and the scope of any redactions, the

documents may be produced pursuant to a protective order with the attorney's eyes only designation. Hence, the Court will take a liberal view towards disclosure. If the parties are unable to reach agreement, then they shall file a joint letter with the Court within seven (7) days of the date of this order.

2. Redaction of Customer-Specific Information

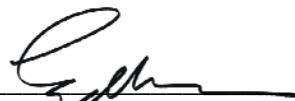
BlueHippo contends that it should be permitted to redact customer-specific information -- *i.e.*, names and addresses -- because the information is not relevant to the issues of class certification and therefore the privacy interests of the customers are more important to protect. The Court agrees that the customers do have a privacy interest in their contact information but that information is relevant, especially for purposes of discovery, to class certification issues. *See Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 354 n.20 (1978) ("We do not hold that class members' names and addresses never can be obtained under the discovery rules. There may be instances where this information could be relevant to issues that arise under Rule 23 or where a party has reason to believe that communication with some members of the class could yield information bearing on these or other issues."). In particular, a customer with a complaint similar to the complaints of Plaintiffs would likely be a person whom Plaintiffs would want to contact to support their motion for class certification.

Accordingly, the Court concludes that for such persons, the names and addresses shall not be redacted but that the information shall be produced subject to the protective order, more specifically, the attorney's eyes only designation.

This order disposes of Docket No. 147.

IT IS SO ORDERED.

Dated: July 8, 2008

  
EDWARD M. CHEN  
United States Magistrate Judge